

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-309-T - ORDER NO. 90-734

August 8, 1990

| | | | |
|--------|--|---|-------------|
| IN RE: | Application of Rev. Andy Young DBA |) | |
| | Seeing is Believing Tours and Charters |) | ORDER |
| | Unlimited, 119 Pine Street, Duncan, SC |) | GRANTING |
| | 29334, for a Class C Charter Certificate |) | CERTIFICATE |
| | of Public Convenience and Necessity. |) | |

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed on April 13, 1990, by Rev. Andy Young DBA Seeing is Believing Tours and Charters Unlimited (the Applicant) for a Class C Charter Certificate of Public Convenience and Necessity to transport passengers as follows:

BETWEEN POINTS AND PLACES IN SOUTH CAROLINA.

Subsequent to the initiation of this proceeding, the Commission Staff instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in the State Register.

A Petition to Intervene was timely filed by D. R. Wismer DBA Sea Island Stages of Beaufort/Hilton Head (the Intervenor).

Pursuant to notice duly given, a hearing was held at the Offices of the Commission on July 18, 1990, the Honorable Marjorie Amos-Frazier presiding. The Applicant was represented by Gwendlyne A. Young, Esquire; D. R. Wismer appeared pro se; and the Commission Staff was represented by H. Clay Carruth, Staff Counsel.

Testifying on behalf of the Applicant was Rev. Andy Young of Duncan, South Carolina, sole proprietor and principal of the Applicant.

Testifying on behalf of the Intervenor was D. R. Wismer of Summerville, South Carolina, sole proprietor and principal of the Intervenor.

According to S.C. Code Ann., §58-23-330 (1989 Cum. Supp.), an applicant applying for a certificate to operate as a motor vehicle common carrier may be approved upon a showing that the applicant is fit, willing and able to appropriately perform the proposed service; provided, however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application.

If an application is denied, another application may not be made until at least six months have elapsed since the date of the denial.

After the testimony of the Applicant's witness, the Intervenor moved to dismiss the Application upon grounds of the Applicant's failure to present testimony from any shipper witnesses and the

lack of necessity for South Carolina intrastate motor carrier authority for church transportation purposes.

The Applicant responded that he intended to perform transportation services other than those strictly church-related.

The Chairman then took the Motion under advisement.

The Commission finds and concludes that §58-23-330, supra, does not require an applicant to present the testimony of shipper witnesses in a proceeding for South Carolina intrastate motor carrier authority. The Commission further finds that the testimony of Rev. Andy Young establishes that the Applicant intends to render motor carrier service for which a certificate of public convenience and necessity is required.

Therefore, the Commission will herein deny the Intervenor's Motion to Dismiss the Application.

FINDINGS OF FACT

Upon consideration of the information contained in and attached to the Application, and the testimony of the witnesses, the Commission finds the following facts:

1. That Rev. Andy Young is a computer programmer and a minister, having served as a minister for 21 years.
2. That the Applicant has assets worth \$162,000.00 and a net worth of \$133,612.75.
3. That Rev. Young's church of 530 active members attends various church-related and non-church-related activities throughout the State of South Carolina and that some non-members participate in these trips.

4. That the Applicant has one (1) 1967 Silver Eagle Bus with a seating capacity of 46.

5. That the Applicant's bus is regularly checked and maintained.

6. That the Applicant will employ two (2) drivers -- one (1) having 12 years experience -- who will be fully certified and licensed.

7. That the Applicant currently has liability insurance through the church, but that the Applicant intends to procure insurance to conform to the requirements in the Commission's Regulations.

8. That the testimony of D. R. Wismer established only that his business lost \$140,000 last year and that his opinion was that the addition of another carrier in the market he serves would dilute business potential.

CONCLUSIONS OF LAW

Section 58-23-330, supra, imposes upon an applicant the burden of demonstrating that it is fit, willing and able to appropriately perform the proposed motor carrier services. The Statute imposes upon any intervenor(s) the burden of demonstrating that the public convenience and necessity is already being served by those certificated motor carriers authorized to provide the motor carrier services for which the applicant seeks authority.

Based on the facts found hereinabove, as well as the evidence in the entire record herein, the Commission finds and concludes that the Applicant has demonstrated its fitness, willingness and

ability to appropriately perform the proposed motor carrier services, while the Intervenor has not demonstrated that the public convenience and necessity is already being served by it and/or other certificated motor carriers authorized to provide the proposed motor carrier services.

Therefore, the Commission reaches the following conclusions of law:

1. That the Applicant is fit, willing and able to appropriately perform the proposed motor carrier services.

2. That the public convenience and necessity is not already being served as to the motor carrier services proposed in the instant Application.

IT IS THEREFORE ORDERED:

1. That the Intervenor's Motion to Dismiss the Application be, and hereby is, denied.

2. That the Application of Rev. Andy Young DBA Seeing is Believing Tours and Charters Unlimited for a Class C Charter Certificate of Public Convenience and Necessity be, and hereby is, approved.

3. That the Applicant file the proper license fees and other information required by S.C. Code Ann., Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

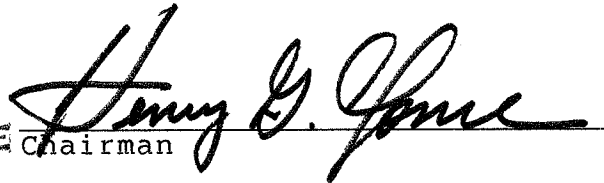
4. That upon compliance with S.C. Code Ann., Section 58-23-10, et seq. (1976) as amended, and the applicable provisions of R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.

5. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

6. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

VICE Chairman



ATTEST:


Executive Director

(SEAL)